

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JEFFREY SWEET</b>	:	: <b>CIVIL ACTION</b>
<u>          v.          </u>	:	
<b>JOHN KERESTES, SUPERINTENDENT, et al.,</b>	:	<b>NO. 07-cv-5381</b>

**MEMORANDUM AND ORDER**

The Antiterrorism and Effective Death Penalty Act of 1996, known as “AEDPA,” and codified at 28 U.S.C. §§2241-2266, concerns the rights of individuals in state or federal custody to file a petition for the issuance of a federal writ of habeas corpus. If successful, a petitioner may obtain release from custody on the ground that the petitioner’s rights guaranteed by the United States Constitution, or a federal law, or a treaty entered into by the United States, were violated. Habeas corpus petitions under AEDPA are the sole sources of this type of relief. Benchoff v. Colleran, 404 F.3d 812 (3<sup>rd</sup> Cir. 2005); Coady v. Vaughn, 251 F.3d 480 (3<sup>rd</sup> Cir. 2001).

Where an individual is in state custody, AEDPA may provide relief under 28 U.S.C. §2254 or 28 U.S.C. §2241. Relief under 28 U.S.C. §2254 is limited by its terms to a Constitutional<sup>1</sup> attack on the imposition or execution<sup>2</sup> of a state conviction or sentence, and may be requested only after a sentence has been imposed.

Federal jurisprudence requires that a more specific statute take precedence over

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<sup>1</sup>Where there is an attack on state custody which does not involve a Constitutional argument, there is no right to habeas corpus relief, and, assuming that petitioner’s appeals in state court are exhausted, the proper remedy lies in filing a petition with the state’s Governor seeking executive clemency. Herrera v. Collins, 506 F.3d 390 (1993). Although Herrera is a pre-AEDPA case, it remains valid law after the enactment of AEDPA. Ruiz v. USA, 221 F.Supp. 2d 66 (D.Mass. 2002), aff’d, 339 F.3d 39 (1<sup>st</sup> Cir. 2003).

<sup>2</sup>Coady v. Vaughn, 251 F.3d 480 (3<sup>rd</sup> Cir. 2001).

a more general statute. Thus, because §2254 is more specific than §2241, an individual in state custody may rely on §2241 only if the matter does not fall under §2254.<sup>3</sup> Relief under 28 U.S.C. §2241 is therefore limited to a constitutional attack on custody made before the state sentence is imposed.

On December 18, 2007, petitioner filed a 28 U.S.C. § 2241 petition in this court, at No. 07-cv-5381. On December 21, 2007, petitioner, through counsel, requested that the matter be re-characterized as a §2254 petition. It appearing that this request is proper, it will be granted.

Accordingly, this 14th day of January 2008, it is ordered that this case be re-characterized as a §2254 habeas.

BY THE COURT:

/s/ Edmund V. Ludwig  
Edmund V. Ludwig, J.

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<sup>3</sup>Coady v. Vaughn, 251 F.3d 480 (3<sup>rd</sup> Cir. 2001).